ITEM 1008-D

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Calendar No. 1178

96TH CONGRESS, 2d Session | SENATE | REPORT No. 96-1047

ORIGINAL

PROVIDING THAT CERTAIN LAND OF THE UNITED STATES SHALL BE HELD BY THE UNITED STATES IN TRUST FOR CERTAIN COMMUNITIES OF THE MDEWAKANTON SIOUX IN MINNESOTA

DECEMBER 1 (legislative day, NOVEMBER 20), 1980.—Order to be printed

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Mr. MELCHER, from the Select Committee on Indian Affairs, submitted the following

COMPLETED

REPORT

[To accompany H.R. 7147]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 7147) to provide that certain land of the United States shall be held by the United States in trust for certain communities of the Mdewakanton Sioux in Minnesota, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

H.R. 7147 provides that three parcels of land totaling approximately 1,000 acres situated in the State of Minnesota which were acquired by the United States for the use and benefit of the Mdewakanton Sioux Indians under three separate Acts of Congress in the late 1800's shall continue to be held by the United States but in trust for three separate Mdewakanton Sioux communities situated in that State.

The effect of H.R. 7147 would be to change the legal status of the ownership of the lands involved, which are now held by the United States under the Acts described above for the use of those Mdewakanton Sioux Indian individuals who resided in (or were en route to) the State of Minnesota on May 20, 1886, and for their descendants. Under the bill, as noted above, all right, title, and interest in such lands would be declared instead to be held by the United States in trust for three Minnesota Sioux tribal communities. The rights of individuals to whom an interest has already been assigned are protected under the provision of Section 3 of the bill.

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BACKGROUND AND NEED

After the Great Sioux Uprising of 1856, Congress enacted legislation in 1888, 1889, and 1890, authorizing the appropriation of funds to acquire lands for members of the Mdewakanton Sioux Tribe who did not participate in such uprising. These lands were acquired for the use of the members of the Mdewakanton Sioux who were living in Minnesota as of 1886 and their descendants.

After the enactment of the Indian Reorganization Act of 1934, additional lands were acquired in trust for the benefit of the three Mdewakanton groups who organized under that Act. In order to protect the rights of descendants of those Sioux for whom the 1886 lands were acquired, the constitution and by-laws of the groups established two classes of members: all members of the community who were entitled to the benefits of the tribal lands acquired under the Reorganization Act and members who were descendants of the 1886 Mdewakanton and who had exclusive rights to the benefits of the 1886 lands.

This distinction has severely hampered the tribal efforts to achieve self-determination, as well as effectively barred the Mdewakanton from participation in several Federal programs. In the case of the Lower Sioux and Prairie Island Communities, the land acquired under the 1888, 1889, and 1890 Acts for individuals is interspersed among the land now held in trust for the communities. The result is a checkerboard pattern of land used that severely diminishes the effectiveness of overall land management programs and community development.

With respect to each of the three communities, much of the land that would be affected would be useful for residential or community purposes, which require long-term lease provisions with an encumberable document as loan security. However, such use is not now possible because of the unusual ownership status of the land which, since it requires the Secretary of the Interior to assure the continuing availability of the land for assignment to eligible beneficiaries of the three Acts, effectively prohibits the issuance of long-term leases on it. Further, the land assignments made to those Mdewakanton Sioux individuals eligible under the Acts are not encumberable documents that can be used in securing loans from commercial institutions. The change in the lands' status contemplated by H.R. 7147, to lands held in trust for the three communities, would allow more productive use of the land by eliminating these problems and would enable the communities involved to manage all of their lands more efficiently.

LEGISLATIVE HISTORY

H.R. 7147 was introduced by Representative Nolan of Minnesota and was favorably reported by the House Committee on Interior and Insular Affairs on September 26, 1980. The bill passed the House and was referred to the Senate Select Committee November 19, 1980. There is no comparable Senate bill.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by a poll of its members on December 1, 1980, by unanimous vote recommends that the Senate pass H.R. 7147 without amendment.

COMMITTEE AMENDMENTS

There are no Committee amendments.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that certain lands totaling approximately 1,000 acres situated in the State of Minnesota which were acquired by the United States under three separate Acts of Congress for the use or benefit of certain Mdewakanton Sioux Indians and their descendants are declared to hereafter be held by the United States in trust for three separate Sioux Indian communities. The purpose of this section is to change and clarify the legal status of the lands in question in order to enhance the beneficial use of the lands.

Section 2 provides that the Secretary of the Interior shall publish in the Federal Register a description of the lands involved and provides further that such lands shall be a part of the reservations of the communities for which they are held in trust.

Section 3 provides that nothing in this Act shall alter, or require the alteration, of any rights under any contract, lease, or assignment of such lands entered into or issued prior to enactment of this legislation. This protects the rights of all persons having a present interest in the lands.

COST AND BUDGETARY CONSIDERATION

The cost estimate for H.R. 7147, as provided by the Congressional Budget Office, is outlined below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., December 1, 1980.

Hon. JOHN MELCHER,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 7147, a bill to provide that certain land of the United States shall be held by the United States in trust for certain communities of the Mdewakanton Sioux in Minnesota, as ordered reported by the Senate Select Committee on Indian Affairs, December 1, 1980.

The bill would change the legal status of certain parcels of land, currently owned by the United States, to that of land specifically held in trust for the three Sioux communities indentified in the bill. This technical change in the status is expected to facilitate community development on the reservations. Based on the review of this bill, it appears that no additional cost to the government would be incurred as a result of enactment of this legislation.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 6 of rule XXVII of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that the bill H.R. 7147 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATION

The Executive Communication of the Department of the Interior dated November 19, 1979, transmitting departmental views on H.R. 7147 to the House of Representatives, is as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 9, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This reports to your request for our views on H.R. 7147, a bill "To provide that certain land of the United States shall be held by the United States in trust for certain communities of the Mdewakanton Sioux in Minnesota."

We recommend the adoption of the enclosed amendment to H.R. 7147 in the nature of a substitute and the enactment of the bill as so amended.

H.R. 7147 would declare that all right, title, and interest of the United States in land in Minnesota held by the United States for the use of certain Mdewakanton Sioux Indians under the Acts of June 29 1888 (25 Stat. 217), March 2, 1889 (25 Stat. 980), and August 19, 1890 (26 Stat. 336), shall be held by the United States in trust as follows:

(1) some 258.25 acres of land located in Scott County, all in township 115 north, range 22 west, would be held in trust for the Shakopee Mdewakanton Sioux Community of Minnesota;

(2) some 492.5 acres of land located in Redwood County all in township 112 north, range 35 west, would be held by the United States in trust for the Lower Sioux Indian Community of Minnesota; and

(3) some 120 acres of land located in Goodhue County in township 114 north, range 15 west, would be held by the United States in trust for the Prairie Island Indian Community of Minnesota.

Land held in trust for each community under the bill would be a part of the reservation of such community. The bill would not affect any contract, lease, or assignment with respect to the lands involved which is in existence on the date of the enactment of the bill. We note that the bill fails to include in the description of the land located in Redwood County two 40-acre tracts in section 2 of township 112 north, range 35 west, which should be s[illegible] included—(1) the southwest quarter northeast quarter and (2) the northwest quarter southeast quarter.

In 1888, the Department of the Interior requested the appropriation of "$20,000 for support of the Mdewakanton Band of Sioux Indians in Minnesota." House Ex. Doc. 228, 50th Cong., 1st Sess. The requested provision was added as a floor amendment, proposed by Rep. MacDonald of Minnesota, to an Indian affairs appropriations bill. The sponsor stated that during a Sioux uprising in Minnesota during August 1862, "a few of the [Sioux] remained friendly to the whites and became their trusted allies and defenders and . . . did valuable service in protecting our people and their property, and in saving many lives . . . ." However, under the Act of February 16, 1863, all treaties with the four Sioux Bands involved were "abrogated and annulled, and all the lands, annuities, and claims previously accorded to said Indians were declared to be forfeited to the United States" because of the uprising. "I am almost ashamed to say it," the sponsor stated, "but the fact is that no exception was made, even in favor of these friendly Indians." Cong. Rec. 2976–2978 (50th Cong., 1st Sess.)

The resulting Act of June 29, 1888, included the provision as follows:

> "For the support of the full-blood Indians in Minnesota, belonging to the Mdewakanton Band of Sioux Indians, who have resided in said State since [May 20, 1886], and severed their tribal relations, twenty thousand dollars, to be expended by the Secretary of the Interior in the purchase, in such manner as in his judgment he may deem best, of agricultural implements, cattle, horses, and lands . . ." (25 Stat. at 228–229)

A similar provision was included in the Act of March 2, 1889 (25 Stat. 980). It provided for a $12,000 appropriation, added to the Indian beneficiaries those "who were then [May 20, 1886] engaged in removing to said State and have since resided therein," and specified that $10,000 could be used in the purchase of such lands and items as "may be deemed best in the case of each of these Indians or family thereof." It also provided that if the amounts appropriated under that Act or Act of June 29, 1888, were not expended within the fiscal year for which they were appropriated, they were to remain available for the purposes for which they were appropriated.

The Act of August 19, 1890, included the appropriation of $8,000 for the Minnesota Sioux, utilizing essentially the same language (26 Stat. at 349) as the 1889 Act except that the 1890 Act applied to "mixed blood" as well as full blood Indians and did not contain the provision making the funds available beyond the fiscal year.

The effect of H.R. 7147 would be to change the legal status of the ownership of the lands involved, which are now held by the United States under the Acts described above for the use of those Mdewakanton Sioux Indian individuals who resided in (or were enroute to) the State of Minnesota on May 20, 1886, and for their descendants. Under the bill, as noted above, all right, title, and interest in such lands would be declared instead to be held by the United States in trust for three Minnesota Sioux tribal communities.

The Shakopee Mdewakanton Sioux Community is organized under the Indian Reorganization Act of 1934 (48 Stat. 984) and its governing body is the General Council of the members of the community. No lands are now held in trust by the United States for the

community. The 258.25 acres which H.R. 7147 would declare held in trust for such community were acquired in three transactions in 1890 and 1891 at a total cost of $4,733. The land has a current value of approximately $774,750 ($3,000 per acre).

The Lower Sioux Indian Community is organized under the Indian Reorganization Act and governed by its Community Council. Some 872.5 acres of land are now held by the United States in trust for the community. The 572.5 acres (if the bill is amended to include the 80 acres erroneously omitted) that the bill would declare held in trust for such community were acquired in five transactions in 1889 at a total cost of $8,357.22. Their current value is approximately $572,500 ($1,000 per acre).

The Prairie Island Indian Community is also organized under the Indian Reorganization Act and is governed by its Tribal Council. Some 414 acres of land are now held in trust by the United States for the community. The 120 acres which H.R. 7147 would declare held in trust for such community were acquired in a single transaction in 1889 at a cost of $1,560 and have a current value of approximately $180,000 ($1,500 per acre).

It should be noted the current membership of these three communities is not exclusively composed of the class of Mdewakanton Sioux individuals for whose benefit such land is now held by the United States. However, it should also be noted that the cost to the United States of lands purchased under the 1888, 1889, and 1890 Acts was set off against the recovery by the Mdewakanton and Wahpakoota Bands of Sioux Indians in their suit against the United States (57 Ct. Cl. 357 (1922)), the beneficiaries of which included many individuals other than those for whom such land was held by the United States.

In the case of the Lower Sioux and Prairie Island Communities, the land acquired under the 1888, 1889, and 1890 Acts for individuals is interspersed among the land now held in trust for the communities. The result is a checkerboard pattern of land used that severely diminishes the effectiveness of overall land management programs and community development.

With respect to each of the three communities, much of the land that would be affected would be useful for residential or community purposes, which require long-term lease provisions with an encumberable document as loan security. However, such use is not now possible because of the unusual ownership status of the land which, since it requires the Secretary of the Interior to assure the continuing availability of the land for assignment to eligible beneficiaries of the three Acts, effectively prohibits the issuance of long-term leases on it. Further, the land assignments made to those Mdewakanton Sioux individuals eligible under the Acts are not encumberable documents that can be used in securing loans from commercial institutions. The change in the lands' status contemplated by H.R. 7147, to lands held in trust for the three communities, would allow more productive use of the land by eliminating these problems and would enable the communities involved to manage all of their lands more efficiently.

We suggest, in order to avoid the need to include in the bill a detailed land description that is both cumbersome and subject to inadvertent error, that the enclosed amendment to H.R. 7147 in the nature

of a substitute be adopted. The amendment would provide for the publication in the Federal Register of the legal description of the land involved, a method by which any error may be more easily corrected. It also makes minor technical changes in the language of H.R. 7147.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

THOMAS W. FREDERICK,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection (7) of rule XXVII of the Standing Rules of the Senate, the Committee notes that there are no changes in existing law.

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